SHAMSUDIN BIN EMBUN v. P. T. SEAH & CO.

[O.C.J. (Chan Sek Keong J.C.) November 27, 1986]

[Singapore – S/C No. 8946/86]

Legal Profession – Solicitor and client costs – Agreement on costs – Plea of non est factum – Whether agreement fair and reasonable – Legal Profession Act (Cap. 217, 1970 Ed.), ss. 111 & 113(1).

In this case, an application was made under section 113 of the Legal Profession Act (Cap. 217, 1970 Ed.) by the applicant to set aside an agreement on costs of $15,000 ("the agreement") dated September 20, 1985 and made between the applicant and his solicitor.

The application was based on two grounds: (1) the agreement was unfair or unreasonable under section 113 of the Legal Profession Act (Cap. 217, 1970 Ed.) and (2) the applicant did not know that the agreement was an agreement for costs, *i.e.* the plea of *non est factum.*

Held: (1) the applicant did not understand the scope of the agreement when he signed it;

(2) the agreement, by reason of its uncertain scope and its failure to contain the full terms of the bargain between the solicitor and the applicant, was not such an agreement that would come within the terms of section 111 of the Legal Profession Act;

(3) in an application of this nature where a client seeks to impeach the fairness or reasonableness of an agreement for costs on contentious matters, the English courts have wisely decided that a solicitor, if he wishes to enforce such an agreement against his client, must prove its fairness and reasonableness and this onus is not shifted by the client taking the initiative to set aside the agreement;

(4) the agreement was not fair to the applicant because its contents were never explained to, or fully understood by, the applicant. Furthermore and in any case, the allegations of voluntariness and lack of pressure were not supported by the facts;

(5) the fee of $15,000 was unreasonable.

Per curiam: "... although the legislature in section 111 of the Legal Profession Act has allowed solicitors to enter into agreements on costs with their clients, it has also at the same time, in recognition of the influence of solicitors over their clients, ensured by section 113(1) that no action shall be brought to enforce such an agreement except by an order of the court."

Cases referred to:

(1) *Chamberlain* v. *Boodle & King* [1982] 3 All E.R. 188.
(2) *Re Baylis* [1896] 2 Ch. 107.
(3) *Re Stuart* [1893] 2 Q.B. 201.
(4) *Wright* v. *Carter* [1903] 1 Ch. 27.
(5) *Mearns* v. *Knapp* (1889) 37 W.R. 585.
(6) *Stedman* v. *Collett* [1854] 17 Beav; 51 E.R. 1171.

CIVIL SUIT.

Gopal Krishnan Nair for the applicant.

P. T. Seah in person.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application under section 113 of the Legal Profession Act by one Shamsudin bin Embun ("the applicant") to set aside an agreement on costs of $15,000 ("the agreement") dated September 20, 1985 and made between the applicant and his solicitor, P.T. Seah ("the solicitor" which expression, for convenience, includes P.T. Seah & Co.).

The application is based on two grounds: (1) the agreement is unfair or unreasonable under section 113 of the Legal Profession Act (Cap. 217) and (2) the applicant did not know that the agreement was an agreement for costs, *i.e.* the plea of *non est factum.*

This application would normally have been dealt with in a summary manner. However, in view of the plea of *non est factum,* I decided to give both parties an opportunity to give oral testimony on this plea. They elected to do so. Accordingly, the evidence adduced in this case is found not only in my notes of evidence but also the affidavits filed by both parties.

The facts are as follows. On April 24, 1980, the applicant was injured whilst assisting in the loading of some pipes onto a lorry belonging to the first defendant at Jurong Port when some pipes pushed him off the lorry onto the floor. The loading was done by a forklift alleged to have been in the control of the second defendant or the third defendant. On May 2, 1980 the applicant signed a warrant to act authorizing the solicitor to act for him. On April 22, 1983, the solicitor issued a writ of summons indorsed with a general indorsement as follows:

> "The plaintiff's claim is for damages for personal injuries and consequential loss suffered by him as a result of an accident on or about the 24th day of April 1980 at Jurong Port, Singapore and caused by the negligence of the first, second or third defendants, their servants, or agents or by the breach by the second or third defendants of their duty to the plaintiff as an invitee to take reasonable care for the safety of the plaintiff as their invitee during the course of his employment as a lorry driver employed by Yew Choon Pte Ltd."

On November 1, 1983, the solicitor filed an affidavit of service in which he affirmed that the writ had been served by him on the first defendant by leaving it at his registered office. The affidavit appears to have been defective because on January 14, 1984, the solicitor filed another but fuller affidavit affirming substantially the same fact. On the same day, the solicitor entered interlocutory judgment against the first defendant.

On February 21, 1984, an appearance to the writ was entered by the second defendant and on February 22, 1984, an appearance was entered by the third defendant. On March 19, 1984, the solicitor filed a statement of claim in which it was alleged that (a) the accident was caused by the negligence of the first defendant (of which five particulars of negligence were given) or a breach of duty by the first defendant as employer of the plaintiff (b) the second defendant was liable as having the control of the forklift or as an occupier of the premises where the accident occurred (of which three particulars were given) (c) the third defendant was liable as having the control of the forklift or as an occupier of the premises where the accident occurred (of which three particulars were given) and (d) the accident was *res ipsa loquitur.*

On May 22, 1984, the solicitor filed the notice of appearance of assessment of damages wherein January 15, 1985 was appointed as the date for the mention of the assessment of damages. The matter indeed came on for mention on January 15, 1985 and the Registrar's minutes show that the solicitor was not ready to assess damages on that day. The assessment commenced on January 23, 1985 with the applicant giving evidence of his injuries and was finally completed on September 10, 1985. The certificate of assessment of damages was signed by the Assistant Registrar and dated September 10, 1985. On February 17, 1986, the solicitor entered final judgment against the first defendant for damages assessed at $37,400 plus costs to be taxed.

During this period, something else was happening. The applicant was unhappy with the delay in the conclusion of his claim. So in July 1985, he approached the Legal Aid Bureau to act for him. On July 25, 1985, the Legal Aid Bureau wrote to the solicitor who, on July 31, 1985, replied, *inter alia,* that he estimated his costs to be $15,000 and asked whether the Legal Aid Bureau was prepared to give a banker's guarantee to pay his costs. He ended the letter thus:

"We will only allow others to take over the case after our costs have been paid in full."

The applicant testified that the Legal Aid Bureau gave him a copy of the respondent's letter which he threw away. He told the Legal Aid Bureau that he did not have $15,000. The Legal Aid Bureau did not proceed to act further on behalf of the applicant. On September 20, 1985, the applicant called at the office of the solicitor and signed the agreement. The respondent did not give evidence on, and the applicant could not remember, the circumstance which led to the applicant calling at the office of the respondent on this occasion. However, the applicant, when shown the agreement, readily admitted signing the agreement but denied that he knew the full implications of its contents as the document was not explained to him.

On June 17, 1986, the applicant wrote a letter to the solicitor to thank him for having acted for the applicant but at the same time to complain, *inter alia,* that the charge of $15,000 was excessive and asking for copies of the papers in the case to be sent to him, as he had never been given copies thereof throughout the claim period. On June 20, 1986, the solicitor replied to the applicant to deny the allegation; but the commencement paragraph is revealing. It reads:

"We refer to your letter dated June 17, 1986 and are pleased to note that you are thankful to us for acting for you in the above matter. We take it you mean you have no complaint about us."

I excerpt this paragraph decidedly as its tenor is symptomatic of the solicitor's inability to appreciate or evaluate his client's grievance.

On or about July 15, 1986, the applicant discharged the solicitor as his solicitor and appointed in his stead the present solicitors who on August 19, 1986 took out this application to set aside the agreement and to have the solicitor's solicitor and client costs and party and party costs taxed.

I will now deal with the plea of *non est factum.* The applicant testified that although he had been employed first by the British Army from 1950 to 1957 as a driver holding the rank of corporal and then by the Singapore Armed Forces from 1957 to 1977 as a driver holding the rank of corporal and rising to the rank of sergeant (motor transport), he could not read, write or speak English although he could copy English words. He was educated in Malay in romanized script in a Malay school. He was never taught English in school nor did he get any instruction in English whilst in the army. He said that when he signed the warrant to act, the contents were not explained to him. Also, when he signed the agreement to pay $15,000 to the solicitor, the contents were not explained to him. The solicitor was unable to produce any evidence to show that the applicant could read or write or speak English but the solicitor testified that the applicant spoke to him in English, when

he first came to his office on May 24, 1980, and because of that he was under the impression that the applicant could read and write at least simple English. He testified further that he personally explained the contents of the agreement to the applicant in English and Malay. In his submission on this point, the solicitor argued that even if no explanation had been given, the applicant should or must have understood the agreement because it contained simple words which are also used as part of the Malay language, *e.g.* "agreement", "costs" and "$15,000".

It is not necessary for me to decide whether or not the applicant was able to read or write English proficiently. On the evidence, I find that when the applicant signed the agreement on September 20, 1985, he knew that it was an agreement on costs for $15,000. He understood the nature of the agreement. It could not have been otherwise as (a) sometime in August 1985, he was informed by the Legal Aid Bureau of the solicitor's demand for $15,000 and (b) by his letter of June 17, 1986, confirmed such knowledge by complaining of its unreasonableness. However, whether he understood the actual contents or scope of the agreement is a different issue. To determine this, I will have to look at the agreement to see what it provides. The agreement is as follows:

"Agreement on Costs

Re: Industrial accident on 24.4.80 Suit No. 1874 of 1983

I, Shamsudin Bin Embun of Block 11, No. 74-H Teban Garden Singapore (2260), hereby agree to pay my solicitors P.T. Seah & Co. the sum of Dollars Fifteen Thousand only ($15,000) for acting for me in the above matter.

Dated the 20th day of September 1985

Sd. Shamsudin
Signature/RTP of abovenamed"

Against the background of the respondent having been retained to act on May 2, 1980, my first observation is that on the face of the agreement, it is not apparent that the fee of $15,000 is payable for work done from May 2, 1980 to September 20, 1985 or for any future period and if so, what period. Second, it is not apparent that the fee of $15,000 includes disbursements.

What is the testimony of the solicitor on the meaning of the agreement? His affidavit made on September 11, 1986, discloses the following:

"9. Paragraph 3 of Shamsudin's affidavit is correct. The facts were made known to him by me as well as by the court. The reason for the delay in entering final judgment was that at that time, it was realized there was a possibility the final judgment against the first defendants was liable to be set aside on the grounds that at all material times, the first defendants had no solicitors to represent them.

10. It was against this background the said agreement of costs was entered into, *i.e.* in the event the said final judgment was set aside, the plaintiff's solicitors will carry on acting for the plaintiff for as long as necessary.

11. By reason aforesaid, the said agreement of costs was entered into on a fair and reasonable basis.

23. The said agreement of costs covers not only work done, but also work to be done in the event (which appeared very likely at that time) the final judgment was set aside (*e.g.* on the ground that the defendants concerned were at all material times unrepresented by counsel)."

Nowhere in this affidavit or in his second affidavit made on September 17, 1986 or in his oral testimony has the respondent ever deposed or said that he had explained to or informed the applicant of his expectation, which he said was a real one, of the judgment being set aside and the consequences thereof in terms of additional legal services that would be required to be rendered by him. If this had been clearly explained to the applicant, one would have expected the applicant to have at least bargained (after having complained that $15,000 was too high) for a partial refund of the fee should it turn out that no such future work was necessary. It was a consideration which operated entirely within the inner recesses of the solicitor's mind and never reached the applicant's mind, assuming that this was a real consideration and not an afterthought to justify the amount. Accordingly, I find that the applicant did not understand the scope of the agreement when he signed it. This finding is reinforced by my second finding, which is that the solicitor's concern about the likelihood of the judgment being set aside was probably a figment of his imagination and the use of that consideration to explain and justify the size of his fee was an afterthought. The solicitor has either forgotten or failed to understand the implications of his letter of July 31 to, and in which he informed, the Legal Aid Bureau that his fees were estimated to have been $15,000 and that he would "only allow others to take over the case after costs have been paid in full." That estimate of $15,000 was for the purpose of discharging his services and could not possibly have taken into account any future work to be done after the payment of that fee!

I now consider the law on the issue of what is a valid agreement in writing between the solicitor

and client as to costs. This is governed by section 111 of the Legal Profession Act which reads as follows:

"(1) Subject to the provisions of any other written law, a solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by the solicitor, either by a gross sum, or otherwise, and at either the same rate as or a greater or a less rate than that at which he would otherwise be entitled to be remunerated.

(2) Every such agreement shall be signed by the client and shall be subject to the provisions and conditions contained in this Part."

In *Chamberlain* v. *Boodle & King*,[1] the Court of Appeal held that an agreement could only amount to a contentious business agreement under section 59 of the Solicitors Act 1974 (which is *in pari materia* with section 111 of the Legal Profession Act) if it was specific in terms and signed by the client. In that case, the defendants' letter to the plaintiff proposing to charge £60 to £80 per hour for lawyers of partner status and from £30 to £45 per hour for associates, in reply to which the plaintiff merely enclosed a cheque for £1,000 as representing one half of the retainer payment, was held not to have been sufficiently specific. Lord Denning M.R. at p. 191 said that:

"Going back to the first Act, the Attorneys' and Solicitors' Act 1870, I should like to say that, to satisfy its terms, the agreement should be clear and represent an agreement in writing by both parties to the whole of its terms. In *Re Raven, ex p Pitt* (1881) 45 L.T. 742 at 743, Fry J. said:

'The words of the Act are 'an agreement in writing'. What is an agreement in writing? It must be a document which shall show all the terms of the bargain between the parties, and show by writing the accession of both parties to those terms.'

To that I would add the subsequent case of *Pontifex* v. *Farnham* (1892) 62 L.J.Q.B. 344.

It seems to me that an agreement in writing can be contained in letters. But the letters ought at least to be signed by the client if he is to be deprived by the agreement of his right to tax. Further the agreement must be sufficiently specific, so as to tell the client what he is letting himself in by way of costs. It seems to me that the letters in this case do not give the client the least idea of what he is letting himself in for. As counsel for Mr. Chamberlain said to us, there is a broad band of many uncertainties. Take, for instance, the rate. It certainly seems high enough to me. It is £60 to £80 an hour. What rate is to be charged? And for what partner? Of what standard? Then £30 to £45 an hour for associates who may be involved. Which legal executives? Of what standard? Which associates? Does it include the typists? That is one of the broad bands which is left completely uncertain by this agreement. Then there is the hourly rate. That must depend on the skill and expertise of the individual partner or associate. A skilled partner can do the work in half the time of a slow partner. Is the client to be charged double the rate because a slow partner has been put on the case? These rates per hour are over a pound a minute. It would seem that there must be a very good system of timing, almost by stopwatch, if that is to be the rate of payment."

O'Connor L.J. in his short judgment at p. 192 said:

"I agree. I only wish to add that, in coming to the decision that the letters of 4 and 24 January 1979 do not constitute a contentious business agreement, they are entirely silent as to how disbursements are to be dealt with and they do not set out any plan by which the client could make any reasoned calculation as to what his monthly or quarterly liability might be."

Applying the test of certainty in *Chamberlain* v. *Boodle & King*[1] to this case, it is clear that the agreement, by reason of its uncertain scope and its failure to contain the full terms of the bargain between the solicitor and the applicant, is not such an agreement that comes within the terms of section 111 of the Legal Profession Act.

If I am wrong in the above finding and that the agreement is valid for the purpose of the Act, I consider next the question of whether the agreement is fair and reasonable between the parties under section 113(2) and (3) of the Legal Profession Act which read as follows:

"(2) Upon any such summons, motion or petition as aforesaid, if it appears to the court or judge that the agreement is in all respects fair and reasonable between the parties, it may be enforced by the court or judge by rule or order, in such manner and subject to such conditions, if any, as to the costs of the summons, motion or petition as the court or judge thinks fit.

(3) If the terms of the agreement are deemed by the court or judge to be unfair or unreasonable, the agreement may be declared void, and the court or judge may thereupon order the agreement to be given up to be cancelled, and may direct the costs, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed, in the same manner and according to the same rules as if the agreement had not been made."

Before I deal with the submissions on what is fair and reasonable, I should first mention that the application before me is taken out by the applicant to, *inter alia*, declare the agreement void on the ground that it was unfair and unreasonable. In an ordinary case, the party making the allegation has to prove it. But, in an application of this nature where a client seeks to impeach the fairness or reasonableness of an agreement for costs on contentious matters, the English courts have wisely

decided that a solicitor, if he wishes to enforce such an agreement against his client, must prove its fairness and reasonableness: see Kay L.J. in *Re Baylis*[2] at p. 119 and *Re Stuart*[3] and this onus is not shifted by the client taking the initiative to set aside the agreement. There are perfectly good reasons for this. In *Re Baylis*,[2] Kay L.J. said at p. 119 that:

"In any case of an agreement between solicitor and client the court must consider the great influence which a solicitor has over his client..."

And in *Wright* v. *Carter*[4] at p. 53, Turner L.J. said that a solicitor:

"may, by virtue of his employment, acquire a personal ascendancy over a client, and this ascendancy may last long after the employment has ceased, and the duty towards the client which arises out of any such ascendancy will last as long as the ascendancy itself can operate."

In *Mearns* v. *Knapp*,[5] a client on March 13, 1888 instructed a solicitor to act on his behalf in the completion of the tea and coffee business for £500. A number of letters were written and, according to the solicitor's statement, between 20 and 30 interviews held (for which the client was charged 10s. per interview) and other business done. On March 31, 1888, the client and his solicitor signed a memorandum of agreement that the bill of costs (without being made up to date) should be £42. He offered to make out a detailed bill if the client wished. The client was a gentlemen's valet and alleged that he acted in ignorance and under pressure in coming to the agreement. Kekewich J. held that for a solicitor of experience the 10s. charge was too high, the solicitor had taken advantage of the client, and that the total fee of £42 was extortionate.

That is why, although the legislature in section 111 of the Legal Profession Act has allowed solicitors to enter into agreements on costs with their clients, it has also at the same time, in recognition of the influence of solicitors over their clients, ensured by section 113(1) that no action shall be brought to enforce such an agreement except by an order of the court.

What is fair and reasonable? The solicitor submitted that (a) "fair" means without pressure of any kind or the kind of urgency that exists before a trial and (b) "reasonable" means not excessive in relation to the amount of work done, taking into account the nature of the work, the duration of his work, the standing of the solicitor concerned, and also the range of fees payable in a High Court action. Paragraph 24 of his affidavit made on September 11, 1986 reads as follows:

"At the time the said agreement on costs was entered into, I have been a practising solicitor for 12 years. The applicant entered into the said agreement on costs voluntarily and fairly (*e.g.* without pressure of any sort) on the basis that it was reasonable (*i.e.* within the normal range of what a solicitor would collect in fees in a High Court action against three separate defendants)."

He submitted that on the facts of this case the applicant had entered into the agreement on costs on a fair basis and the fee of $15,000 was reasonable. In his written submission, he cited the case of *Stedman* v. *Collett*[6] as an example of a fair agreement. In that case, a solicitor who had acted for a client ceased to do so. Several years later, the client requested that certain papers held by the solicitor be delivered to him to prosecute further proceedings. The solicitor required the client to execute an agreement whereby in consideration of the solicitor releasing the papers, the client would pay a sum of £200 when the court should declare the client to be the next of kin of a deceased and entitled to a fund in court. No bill was delivered and five years later, the right of the client was established. The solicitor sued on his agreement and the Master of the Rolls held that the agreement was valid, there having been no fraud or undue pressure, the client having the full benefit of the agreement and it being impossible to restore the parties to their original position. In the course of his judgment, the Master of the Rolls said:

"I am of the opinion that the settlement of a solicitor's bill by a client for a fixed sum is valid and will not be disturbed by this court, where it has been entered into fairly and with proper knowledge on both sides. ...

It is true that the defendant had no professional assistance in this matter, but I do not find that he was ignorant of what it was about. He was conversant with legal matters, he understood the agreement fully..."

Stedman v. *Collett*[6] therefore does not support the solicitor's submission on fairness. Lack of pressure or absence of urgency may indicate voluntariness but voluntariness is not necessarily fairness. It is contrary to any concept of fairness to say that an agreement even though entered into voluntarily is, *ipso facto*, fair to a person who does not understand it fully.

Lord Esher M.R., delivering the only judgment of the Court of Appeal in *Re Stuart*[3] when declaring an agreement on costs null and void on the ground of unfairness, said at pp. 204-205:

"The subject matter of the appeal is an agreement between a solicitor and a person who was desirous of becoming his client as to the terms on which he would act, and the relation of solicitor and client would arise directly an agreement was arrived at. The work to be done was to tax the bill of costs of a solicitor employed by the lady's husband, a part of which she was to pay by order of the court. The arrangement was made before the bill was seen, and was that the solicitor should receive 5 per cent on the amount to be taxed off the bill. It is said that agreement is void, and one reason which has been given is, that it is against public policy, as bearing a resemblance to champerty, and I am not prepared to say that it is not so. Another ground was that the solicitor did not explain to the full extent the liability which the lady was incurring. If it is void on either of these general grounds, that does not affect the other ground brought forward, that it is void under sections 8 and 9 of the Attorneys' and Solicitors' Act 1870. The case for our consideration does not arise under section 4 under which the taxing officer may require the opinion of the court to be taken whether the agreement is fair and reasonable, but comes within sections 8 and 9, relating to the examination and enforcement of agreements and the setting aside of improper ones. Assuming this agreement not to be void as against public policy or on the ground that its effect was not fully explained by the solicitor, what is its position under these sections? By section 9, the court may enforce an agreement if it appears that it is in all respects fair and reasonable. With regard to the fairness of such an agreement, it appears to me that this refers to the mode of obtaining the agreement, and that if a solicitor makes an agreement with a client who fully understands and appreciates that agreement, that satisfies the requirement as to fairness. But the agreements must also be reasonable, and in determining whether it is so the matters covered by the expression 'fair' cannot be re-introduced. As to this part of the requirements of the statute, I am of opinion that the meaning is that when an agreement is challenged the solicitor must not only satisfy the court that the agreement was absolutely fair with regard to the way in which it was obtained, but must also satisfy the court that the terms of that agreement are reasonable. If in the opinion of the court they are not reasonable, having regard to the kind of work which the solicitor has to do under the agreement, the court is bound to say that the solicitor, as an officer of the court, has no right to an unreasonable payment for the work which he has done, and ought not to have made an agreement for remuneration in such a manner."

In the present case, it is clear that if what the solicitor said was true, the agreement was not fair to the applicant, because its contents were never explained to or fully understood by the applicant. Furthermore, and in any case, I find that the allegations of voluntariness and lack of pressure are not supported by the facts. I have no doubt whatever and I find that the solicitor had prior to September 20, 1985 assumed a position of ascendancy over the applicant as not only was the applicant a poor old, retired pensioner who had always had a low station in life, he was ignorant of the law and its arcane procedures and the solicitor was at that time the only solicitor the applicant could turn to in order to protect and enforce his civil rights, the Legal Aid Bureau having been frustrated in its effort to represent the applicant by the respondent's demand of a banker's guarantee for or immediate payment of $15,000. The pressure did not arise from the urgency of the moment but, on the contrary, from the absence of any urgency on the part of the respondent to give the applicant his just dues, and the fear, not altogether unfounded in the circumstances, that he would not be able to get payment on his judgment speedily without the aid of the solicitor. It should be remembered that although the solicitor was retained to act on May 24, 1980 and interlocutory judgment had been signed against the first defendant on January 14, 1984, the applicant had not received up to September 20, 1985, the date of the agreement, a single cent from the judgment in his favour.

The next question is whether the fee of $15,000 is reasonable? In this respect, I accept the test propounded by the solicitor. But what are the facts? The respondent in his oral testimony said that he had done a lot of work over a period of seven years in a difficult and complex case of negligence, vicarious liability and occupier's liability arising out of an industrial accident involving three defendants. He also said that he had 12 years' experience as an advocate and solicitor. In paragraph 21 of his affidavit of September 1, 1986, he said:

"I have been doing this industrial accident case of Shamsudin Bin Embun for the past seven years before I received the first cent from him. The case involved constant attendance on him, difficult investigation into the circumstances of the said accident (which happened in the opposition's territory where members of the public are generally excluded from entering), looking up various authorities on law and eventually finding it is necessary to sue three parties (in the alternative) as defendants."

However, neither in his affidavits nor oral testimony did he particularize such work beyond what is apparent in the documents before the court. It was within his power to produce a draft solicitor and client bill of costs for consideration by the court. Up to the date of hearing of this application, he has not even drafted a party and party bill of costs for taxation against the first defendant so as to provide the court with some evidence of what these costs would be. What the solicitor has done for his client in six years as set out in the documentary evidence is as follows:

(1) 24.4.80 – First meeting with applicant
(2) 22.4.83 – Writ issued
(3) 2.9.83 – Service of writ on first defendant

(4) 1.11.83 – First affidavit of service
(5) 14.1.84 – Second affidavit of service
(6) 14.1.84 – Certificate of non-appearance
(7) 14.1.84 – Interlocutory judgment
(8) 13.1.84 – Certificate of search for appearance
(9) 22.2.84 – Memorandum of appearance of third defendant
(10) 21.2.84 – Memorandum of appearance of second defendant
(11) 13.3.84 – Statement of claim filed
(12) 22.5.84 – Notice of appointment of assessment of damages
(13) 15.1.85 – Mention of notice of assessment of damages
(14) 23.1.85 – Commencement of assessment of damages
(15) 10.9.85 – Assessment completed and Registrar's certificate signed
(16) 17.2.86 – Final judgment signed

In his written submission, the solicitor argued that:

"The reasonableness of the said agreement must be viewed against the surrounding circumstances existing at the time the said agreement was entered into. When the said agreement was made in September 1985, the defendants concerned were unrepresented by solicitors; the judgment obtained was a default judgment; and the defendants concerned were absent at the hearing of the assessment of damages. By reasons aforesaid, the possibility of the said judgment being set aside was quite real; so much so that the said judgment was not extracted till some time later."

The argument has nothing in it except an unreal appreciation of the situation. The agreement was signed more than 20 months after interlocutory judgment was entered and also after the assessment of damages of which the first defendant had notice. In these circumstances, it was inconceivable that the first defendant would apply to set aside, and if they did, would succeed in setting aside the default judgment. The diffidence of the solicitor in this respect contrasted starkly with the confidence he displayed in defending this application.

What was the nature of the claim? The applicant was injured by the negligence of a forklift operator in the employ of the first defendant during loading operations in the premises of the second defendant situated on land belonging to the third defendant. It was a simple case of negligence. There was no question of occupiers' liability on the facts as pleaded. Nor was any other difficult point of law raised. Any difficulty on the law was only in the mind of the solicitor. Yet, a cursory reading of the chronology of steps taken by the solicitor in these proceedings reveals that the solicitor has been extremely dilatory in the prosecution of his client's rights in a cause of ordinary simplicity. He took three years to issue a writ indorsed with a general endorsement, about 11 months to file a statement of claim after the issue of the writ, and two years to assess damages and then another five months to enter final judgment. There was delay from beginning to end and even up to the hearing of this application he has not taxed the party and party costs.

Taking into account all these factors, I have no hesitation in finding that the fee of $15,000 was unreasonable.

Beyond this, I wish to say no more so that the solicitor should not be prejudiced in any way in the taxation of his bill of costs, which I must, in the circumstances of this case, order. I would only draw the attention of the taxing Registrar to the words of Kekewich J. in *Mearns* v. *Knapp*[5] (at p. 586):

"I express my own opinion upon the case, but not in the least intending it to be for the guidance of the taxing master, who, I hope will do what is right without being in any way guided by what I now say."

In relation to this application in general, I quote a passage from the judgment of Kekewich J. in *Mearns* v. *Knapp*[5] (at p. 586) which aptly expresses my sentiments:

"I have seen Mr. Mearns in the witness box, and I do not think he is a client of whom any solicitor should have taken the slightest advantage. I think he is a client that any solicitor having his own honour and that of the profession in view would have guarded in every possible manner and not the less because he was accompanied and advised by the lady to whom he was engaged. I feel pressed with the difficulty to which I have already referred, but I think that I should be wanting in my duty to a profession the honour of which is very dear to me if I did not say that this is an unfair and unreasonable bargain, and should be set aside with costs."

To summarize my findings: (1) the agreement is both unfair and unreasonable; (2) further assuming that the fee of $15,000 includes all future services to be rendered by the solicitor, the agreement is not an agreement for costs under section 111 of the Legal Profession Act.

Accordingly, I make the following orders:

(1) that the agreement is declared void and of no effect;

(2) that the solicitor and client costs payable by the applicant to P.T. Seah & Co. in this suit be taxed by the Registrar;

(3) that P.T. Seah & Co. do submit a bill of costs for both solicitor and client costs to the applicant and party and party costs against the first defendants within 30 days from the date of this order;

(4) that the costs of and incidental to this application be paid by P.T. Seah & Co.

Order accordingly.

Solicitors: *G. Raman & Partners; P.T. Seah & Co.*

WONG HONG TOY & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Lai Kew Chai J.) November 10, 1986]

[Singapore – Magistrate Appeals Nos. 374 & 375 of 1985]

Criminal Law – False statutory declaration – Charge – "Declaration" – Meaning of – Appeal against conviction and sentence – Penal Code (Cap. 103, 1970 Ed.) ss. 193 & 199.

Evidence – Distinction between statutory declaration made and declaration voluntary made – Statutory Declarations Act (Cap. 13, 1970 Ed.), s. 4 – R.S.C. 1970, O. 41 r. 5(2).

In September 1985, the appellants underwent a joint trial in the District Court. They were separately charged for having made a false declaration, which a public officer was authorized by law to receive as evidence, which they knew contained a false statement on a material point within the meaning of section 199 of the Penal Code (Cap. 103, 1970 Ed.) After the close of the case for the prosecution, the Senior District Judge held that a *prima facie* case had been established against both the appellants. The appellants did not give evidence in their defence. Both the appellants were convicted and each of them was sentenced to three months' imprisonment. The appellants appealed against their convictions and sentences.

Held: (1) an offence under section 199 of the Penal Code is by the terms of that section statutorily regarded for the purposes of punishment as serious as the offence of giving false evidence under section 191 of the Penal Code which is equivalent to the offence of perjury under English law;

(2) a "declaration" falling within the ambit of that expression in section 199 of the Penal Code may be (i) a statutory declaration duly made in accordance with the Statutory Declarations Act (Cap. 13, 1970 Ed.) by reason of the statutory presumption under section 4 thereof, or (ii) a declaration voluntarily made or subscribed, though not sworn or affirmed, if it was made or subscribed under circumstances in which the declarant knew or must have known that the statement in his declaration will be and was received by a court or public officer as evidence of a fact in issue under Order 41 rule 5(2) of the Rules of the Supreme Court 1970;

(3) at the time the request was made by the receiver, the purpose of and the need in those circumstances for independent verification of the accounts were plain to any reasonable person. It was undoubtedly plain and appreciated by both the appellants at the time they made the declaration. They clearly knew the serious purport of the declaration;

(4) when the appellants made the joint declaration (i) they knew or must have known that it would be exhibited by the receiver in the receivership proceedings; (ii) they knew that serious questions were raised about the Workers' Party's fraudulent conduct; and (iii) they made the declaration with the intention of persuading or convincing the judgment creditor and the Assistant Registrar that the relevant accounts had exhibited a true and fair view of the transaction of the Workers' Party during the crucial accounting period;

(5) the convictions of both appellants were affirmed. The sentences of both were varied to one month's imprisonment and $10,000 fine for each of them.

Cases referred to:

(1) *Haw Tua Tau* v. *Public Prosecutor* [1981] 2 M.L.J. 49.
(2) *Workers' Party* v. *Tay Boon Too* [1975] 1 M.L.J. 47.
(3) *Workers' Party* v. *Tay Boon Too & Anor.* [1975] 2 M.L.J. 124.
(4) *A. Vedamuttu* (1868) 4 Madras H.C.R. 185.
(5) *Ismail* v. *Emperor* (1914) 15 Cr. L.J. 603; A.I.R. 1914 L.B. 30.
(6) *Velumailum* v. *Public Prosecutor* [1947] M.L.J. 152.
(7) *Teh Kim Chooi* v. *Regina* [1955] M.L.J. 37.
(8) *Baban Singh & Anor* v. *Jagdish Singh & Ors.* A.I.R. 1967 S.C. 68.
(9) *Asgarali Mulla Ibrahimji* v. *Emperor* A.I.R. 1943 Nagpur 17, 19.
(10) *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon & Ors.* [1968] 3 All E.R. 304.
(11) *Davies* v. *Regina* (1974) 59 Crim. App. Rep. 311.

MAGISTRATE APPEALS.

Lord Hugh Emlyn Hooson Q.C. (*Subhas Anandan* with him) for the appellants.

Tan Teow Yeow (*Loke Yuen Kee* with him) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J.: In September 1985 the appellants, who I will refer to as "Wong" and "Jeyaretnam" respectively, underwent a fresh joint trial in the District Court. They were separately charged for having made a false declaration which a public officer was authorized by law to receive as evidence which they knew contained a false statement on a material point within the meaning of section 199 of the Penal Code.